

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CHERYL EVANS	:	SMALL CLAIMS DETERMINATION DTA NO. 819850
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax pursuant to the Administrative Code of the City of New York for the Years 1999 and 2001.	:	

Petitioner, Cheryl Evans, c/o 801 Neil Avenue, Apt. 4K, Bronx, New York 10462, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax pursuant to the Administrative Code of the City of New York for the years 1999 and 2001.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York on January 19, 2005 at 9:15 A.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Kal Safren).

The final brief was to be submitted by May 18, 2005, which date began the three-month period for the issuance of this determination.

ISSUE

Whether, in an employer-employee transaction, Tax Law § 675 renders the employer the party liable for payment of any income tax liability.

FINDINGS OF FACT

1. Petitioner, Cheryl Evans, timely filed a New York State and City resident personal income tax return for the year 1999. On this return, petitioner reported that she received total wage income of \$21,100.00 from three separate employers: West Side Family Dental Group, PC; Glenn J. Chiarello, D.D.S.; and Carol Jaspin, DMD.

2. The Internal Revenue Service (“IRS”) determined that petitioner had failed to include on her 1999 Federal income tax return wages of \$7,332.00 that she received from Sony Corporate Services, Inc. Accordingly, the IRS increased petitioner’s total wage income for 1999 by \$7,332.00, from \$21,100.00 to \$28,432.00, and issued an assessment to petitioner for the Federal income taxes due on this additional wage income.

3. Petitioner did not report the Federal audit changes for 1999 to the Division of Taxation (“Division”) as required by Tax Law § 659, and on September 3, 2002, the Division issued a Notice of Additional Tax Due to petitioner asserting that \$651.00 of additional New York State and City personal income tax was due based on the additional wage income discovered by the Federal audit changes. Petitioner, on some date not disclosed in the record, paid to the Division the additional tax, penalty and interest it asserted was due as the result of the Federal audit changes.

4. Petitioner also timely filed a New York State and City resident personal income tax return for the 2001 tax year which reported that a balance of \$216.00 was due. Petitioner did not remit payment of the \$216.00 balance due when she filed her 2001 tax return with the Division.

5. On July 5, 2002, the Division issued a Notice and Demand for Payment of Tax Due to petitioner for the \$216.00 of unpaid tax shown as due on her 2001 tax return. On some

undisclosed date petitioner paid the additional tax, penalty and interest as asserted due in the Division's Notice and Demand for Payment of Tax Due.

SUMMARY OF PETITIONER'S POSITION

6. Petitioner argues that, pursuant to Tax Law § 675 and applicable regulations, if the required amount of taxes was not withheld by one of petitioner's employers for the years in question, the Division cannot seek payment of these amounts from her. Petitioner asserts that in employer-employee transactions the taxing scheme clearly provides that the employee is not the party made liable for the taxes due.

CONCLUSIONS OF LAW

A. Tax Law § 675 does not relieve petitioner of her obligation to pay the personal income tax due on her wages. The purpose of section 675 is to hold the employer answerable for income tax due from its employees in the event the employer fails in its obligation to properly withhold and pay over to the Division the income taxes due in compliance with Tax Law § 671. Here, there is no evidence in the record before me to establish that the respective employers failed to properly withhold taxes from the wages earned by petitioner during the years in question.

B. The petition of Cheryl Evans is denied and the Division's Notice of Additional Tax Due, dated September 3, 2002, and Notice and Demand for Payment of Tax Due dated July 5, 2002, are sustained.

DATED: Troy, New York
August 11, 2005

/s/ James Hoefer
PRESIDING OFFICER